

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TAE H. KIM, et al.

Plaintiffs

15 CV 3110 (RWS)

-versus=

ECF Case

JI SUNG YOO, etc. et al.

Defendants

-----X

**DECLARATION OF KENNETH KIMERLING
IN OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Kenneth Kimerling hereby declares:

1. I am an attorney for Plaintiffs and submit this declaration in opposition to Defendants' motion for summary judgment.

2. Attached as Exhibit 1 is a chart of the debts defendant Ji Sung Yoo owed to Plaintiffs as of the end of December 2009 for the violations of their rights under the labor laws. It was prepared pursuant to Rule 1006 of the Federal Rules of Evidence. It is based on the damage charts relied upon by the court in Kim v. Kum Gang, Inc., 12 CV 6344 (S.D.N.Y. 2015) (hereinafter "FLSA Action"). See FLSA Action, Memorandum and Order, ECF Doc. 141 at 118–19 (the Court adopting the damage charts to determine relief) and ECF Docs. 124 & 125, Plaintiffs' damage charts.

3. Attached as Exhibit 2 is a chart of the debts defendant Ji Sung Yoo owed to Plaintiffs as of the week of October 31, 2011. It was prepared pursuant to Rule 1006 of the Federal Rules of Evidence. It is based on the damage charts relied upon the court in the FLSA Action. See FLSA Action, Memorandum and Order, ECF Doc. 141 at 118–19 (the Court adopting the damage charts to determine relief) and ECF Docs. 124 & 125, Plaintiffs' damage charts.

4. Attached as Exhibit 3 are excerpts from New York State Department of Labor documents produced pursuant to New York's Freedom of Information Law and concerning the investigation of the Manhattan restaurant of Ji Sung Yoo, Kum Kang, Inc., and covering the payrolls between July 2005 and February 2010 and leading to an award of \$1,950,992.84 on April 11, 2011.

5. Attached as Exhibit 4 are excerpts from New York State Department of Labor documents produced pursuant to New York's Freedom of Information Law and concerning the investigation of the Flushing restaurant of Ji Sung Yoo, Kum Gang, Inc., and covering the payrolls between February 2009 and November 2010 and leading to an award of \$646,080.40 on June 20, 2014.

6. Attached as Exhibit 5 are excerpts from New York State Department of Labor documents produced pursuant to New York's Freedom of Information Law and concerning the investigation of the Manhattan restaurant of Ji Sung Yoo, Kum Kang, Inc., and covering the payrolls between June 2011 and August 2014 and leading to an award of \$2,092,023.49 on November 12, 2015.

7. Attached as Exhibit 6 is the deed and Real Property Transfer Report for the conveyance 52-32 Leith Place, Little Neck, New York, 11362 (Ji Sung Yoo's home, hereinafter "Home") on November 11, 2016.

8. Attached as Exhibit 7 is the deed and Real Property Transfer Report for the conveyance of 1507 Avenue U, Brooklyn, New York, 11229 (hereinafter the "Brooklyn Property").

9. Attached as Exhibit 8 is a true copy of excerpts from the Wells Fargo Bank Appraisal of the market value of the Fifth Avenue Condo as of February 2, 2010.

10. Attached as Exhibit 9 is a true copy of excerpts from the Hudson City Savings appraisal of the market value of the Home as of December 21, 2011.

11. Attached as Exhibit 10 is a true copy of excerpts from the Flushing Savings Bank appraisal of the market value of the Brooklyn Property as of July 27, 2012.

12. Attached as Exhibit 11 is a true copy of the federal 2011 Gift Tax filing of Ji Sung Yoo.

13. Attached as Exhibit 12 is a true copy of the Kum Kang, Inc. 2010 tax return.

14. Attached as Exhibit 13 is a true copy of the Kum Gang, Inc. 2010 tax return.

15. Attached as Exhibit 14 is a true copy of the Kum Kang, Inc. 2011 tax return.

16. Attached as Exhibit 15 is a true copy of the Kum Gang, Inc. 2011 tax return.

17. Attached as Exhibit 16 is a true copy of the Kum Kang, Inc. 2012 tax return.

18. Attached as Exhibit 17 is a true copy of the Kum Gang, Inc. 2012 tax return.

19. Attached as Exhibit 18 is a true copy of a check from the Flushing Bank account of Sandra Yoo.

20. Attached as Exhibit 19 is a true copy of a deposit slip and checks from the Nara Bank account of Sandra Yoo.

21. In June 2016, in an exchange of emails, the parties agreed that Carolyn Yoo retained about \$42,000 from the mortgage of the Home before forwarding the remainder to Sandra Yoo. In addition, the parties agreed that Carolyn did not convey any of that money to Ji Sung Yoo or his restaurant corporations, Kum Gang, Inc. and Kum Kang, Inc.

22. Attached as Exhibit 20 is a chart of the checks signed by Sandra Yoo of which she claimed were consideration. The chart was prepared pursuant to Rule 1006 of the Federal Rules of Evidence. The chart is prepared based on exhibit 2 and exhibit 6 as marked at the deposition of Sandra Yoo.

23. Attached as Exhibit 21 is a chart of the checks from Kum Gang, Inc. and Kum Kang, Inc. to Sandra Yoo based on the General Ledgers of those two corporations. The chart was prepared pursuant to Rule 1006 of the Federal Rules of Evidence.

24. Attached as Exhibit 22 is a chart of the checks given by Kum Gang, Inc. to Gum Gang, Inc. taken from the General Ledgers of Kum Gang, Inc. The chart was prepared pursuant to Rule 1006 of the Federal Rules of Evidence.

25. Attached as Exhibit 23 is a chart of the checks given by Gum Gang, Inc. to Kum Gang, Inc. The chart was prepared pursuant to Rule 1006 of the Federal Rules of Evidence.

26. Attached as Exhibit 24 are excerpts of the General Ledger of Kum Gang, Inc. for the period between February 1, 2013 and January 31, 2014, marked as Exhibit 2 of the deposition of Kang Youl Lee.

27. Attached as Exhibit 25 is a true copy of excerpts of the deposition of Ji Sung Yoo.

28. Attached as Exhibit 26 are true copies of excerpts of the deposition of Sandra Yoo

29. Attached as Exhibit 27 are true copies of excerpts of the deposition of Kang Youl Lee, the accountant for Ji Sung Yoo and his corporations, Kum Gang, Inc. and Kum Kang, Inc.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
CORRECT.

Dated: July 14, 2017

s/ Kenneth Kimerling

Kenneth Kimerling